



To enhance mission performance, TSA is committed to promoting a culture founded on its values of Integrity, Innovation and Team Spirit.

REVISION: This directive supersedes TSA MD 800.4, *International Agreements*, dated June 12, 2013.

SUMMARY OF CHANGES: Updated MD and added various administrative updates for clarification throughout the directive; Section 4.F, Definitions, updated definition to reflect new job title created by OGS realignment; Section 7.A.2 & 4, Procedures: Prior to Negotiations, updated job titles to reflect changes made during OGS realignment; Section 7.C.1, Procedures: Signing, updated language;; Section 7.E.2 & 4, Procedures: Amendment, Expiry, Extension, and Termination, updated job titles to reflect changes made during OGS realignment; Updated Point-of-Contacts.

1. **PURPOSE:** This directive establishes the policy and procedures for negotiating, reviewing, approving, concluding, and reporting International Agreements and International Arrangements with foreign governments and international organizations.
2. **SCOPE:** This directive applies to all TSA organizational elements.
3. **AUTHORITIES:**
 - A. Title 1 U.S.C. §§112 and 112b, Case-Zablocki Act
 - B. Title 6 U.S.C. § 203
 - C. Title 6 U.S.C. § 233
 - D. Title 49 U.S.C. § 101
 - E. Title 49 U.S.C. § 106(l)
 - F. Title 49 U.S.C. § 106(m)
 - G. Title 49 U.S.C. § 40113
 - H. Title 22 CFR §§ 181.1-181.6, Coordination, Reporting and Publication of International Agreements
 - I. [DHS Delegation 7060.2, Delegation to the Administrator of the Transportation Security Administration](#)
 - J. Volume 11, Foreign Affairs Manual 720 et.seq. (setting forth the Circular 175 (“C-175”) process)

4. DEFINITIONS:

- A. Annex: An addendum to an International Agreement that sets forth the specific terms of activities to be undertaken by the parties within the general framework of, and subject to terms set forth in, the International Agreement.
- B. Binding: Refers to an international instrument that is of legal, and not merely of political or moral effect, and which is intended by the parties to create binding obligations governed by and enforceable under international law.
- C. Conclusion: The act of signing, initialing, accepting or otherwise indicating the acceptance of an International Agreement or International Arrangement on behalf of the United States.
- D. Circular 175 (C-175) Process: Process administered by the U.S. Department of State (DOS) implementing the requirement of the Case Zablocki Act (Case Act) that no international agreement may be signed, initialed, accepted or otherwise concluded on behalf of the United States without prior consultation with the Secretary of State.
- E. Declaration: A non-binding document expressing an understanding between or among the signatories. Used interchangeably with Joint Statement.
- F. Regional Analysts (RA): A TSA employee within OGS Global Affairs (GA) responsible for coordinating transportation security matters in a designated geographic region of the world in support of an OGS Regional Director (RD) and one or more TSA Representatives (TSARs).
- G. DOS Regional Bureau: Sub organization of the DOS responsible for economic, political, and other affairs of the DOS in a designated geographic region of the world.
- H. Department of Homeland Security (DHS) Office of International Affairs (OIA): Component of DHS responsible for advising the DHS Secretary on international affairs.
- I. International Agreement: A binding written agreement, including any Annexes and appendices, concluded by the government of the United States with one or more foreign governments (including their agencies, instrumentalities or political subdivisions) or with an international organization, and which requires approval by DOS under the C-175 process. International Agreements to which TSA is commonly a party include Memorandum of Agreement (MOA) and Memorandum of Cooperation (MOC).
- J. International Arrangement: A non-binding written instrument concluded by the government of the United States and one or more foreign governments (including their agencies, instrumentalities, or political subdivisions) or with an international organization, which is not intended by the participants to create binding obligations enforceable under international law. International Arrangements in which TSA is commonly a participant include: Memorandum of Understanding (MOU), Letter of Intent (LOI), Terms of Reference (TOR), Joint Statement and Declaration.
- K. Joint Statement: A non-binding document expressing an understanding between or among the signatories. Used interchangeably with Declaration.

- L. Letter of Intent (LOI): A non-binding written statement expressing a desire to enter into an International Agreement at a future date. An LOI signifies the genuine interest of the prospective parties in reaching a final agreement contingent upon more detailed due diligence and negotiations. An LOI expires within a specified timeframe determined by the prospective parties.
- M. Memorandum of Agreement (MOA): An International Agreement between TSA and a foreign government or international organization or entity that establishes a general framework of mutual obligations. The MOA will describe the specific responsibilities of and actions to be taken by each party so that their goals may be accomplished. Examples of MOAs include agreements covering capacity development, information sharing, technical assistance, and Federal Air Marshal deployments. Specific activities contemplated by an MOA are generally covered in Annexes to the framework agreement.
- N. Memorandum of Cooperation (MOC): An International Agreement that sets forth a basic framework for technical cooperation between TSA and a foreign government or international organization or entity, including, *inter alia*, exchanges of information, reciprocal visits by experts, preclearance aviation security agreements, and mutual participation in projects in which both parties are interested. Specific projects are usually described in Annexes to the MOC.
- O. Memorandum of Understanding (MOU): An International Arrangement concluded by TSA and a foreign government or international organization. An MOU typically describes the participants' shared understandings, goals, aspirations and plans, but does not create legal rights and obligations and is not legally enforceable.

NOTE: Some countries may refer to a binding international agreement as an MOU. For purposes of this directive, an MOU is not an International Agreement and is always non-binding.

- P. Negotiation: Communication by any means of a position or an offer, including by the provision of a draft agreement or arrangement, on behalf of the United States, the Department of Homeland Security (DHS) or any component agency, by authorized personnel to an agent or representative of a foreign government, including an agency, instrumentality, or political subdivision thereof, or of an international organization, in sufficient detail that the acceptance in substance of which would result in an International Agreement or International Arrangement. The term "negotiation" does not include preliminary or exploratory discussions or routine meetings, provided that such discussions or meetings are conducted with the mutual understanding that the views communicated do not and shall not bind or commit any side, legally or otherwise.
- Q. Non-binding: Refers to a written document that records the terms of an understanding or arrangement between the participants without, by so doing, creating any obligations that would be binding under international law. Non-binding arrangements may carry significant moral or political weight, and are often used in international relations to establish political commitments.
- R. Program Office: A TSA organizational element with responsibility for major TSA functions and headed by a TSA senior management official. OGS Regional Bureaus may also serve as the Program Office for the purposes of this MD.

- S. Science and Technology (S&T) Agreement: An International Agreement between the government of the United States and the government of a foreign country, international organization or other international legal person regarding cooperation in science and technology for critical infrastructure protection, border security or other aspect of homeland security, administered by S&T. DHS components may use an S&T Agreement to carry out joint projects with their foreign party counterparts that fall within the areas of cooperative activity contemplated by the S&T Agreement. Typically, an S&T Agreement consists of Cooperative Activity Arrangements which implement the provisions of the S&T Agreement, and Technical Annexes (TAs), which are entered into by instrumentalities of the states party to the S&T Agreement.
- T. Technical Annex (TA): An Annex to an S&T Agreement that contains the specific terms of a cooperative activity undertaken under the S&T Agreement. A TA is an International Agreement for purposes of this directive.
- U. Terms of Reference (TOR): A non-binding international instrument that describes in general terms the purpose and structure of a contemplated project, working group, negotiation, etc. A TOR documents a common understanding of the purpose, objectives, scope and deliverables (i.e., what the participants want to be achieved).
- V. TSA Representatives: A TSA employee posted to a U.S. embassy or consulate overseas who serves as the principal TSA liaison to foreign governments in all matters relating to transportation security within a designated country and/or geographic area.

5. RESPONSIBILITIES:

- A. Office of Chief Counsel (OCC) is responsible for:
 - (1) Preparing, drafting, assisting in the negotiation and conducting a legal review of all International Agreements and International Arrangements and Annexes thereto;
 - (2) Ensuring that the appropriate legal clearances from, notices to and coordination with DHS and other interested U.S. Government agencies are effected, both prior to the initiation of negotiations and prior to the signing and conclusion of an International Agreement or International Arrangement, as necessary;
 - (3) Coordinating with DOS Office of the Legal Advisor for Economic and Business Affairs (L/EB) regarding all aspects of compliance with the C-175 Process;
 - (4) Ensuring that the substantive terms of all International Agreements or International Arrangements under negotiation are consistent with all relevant legal requirements; and
 - (5) Reviewing and clearing all proposed updates, amendments and revisions to International Agreements, International Arrangements, and any Annexes, appendices or project arrangements thereto.

B. The Office of Global Strategies (OGS) is responsible for:

- (1) Approving or denying all requests to initiate on behalf of TSA an International Agreement or International Arrangement and any Annex, appendix, or project arrangement thereto, including those that have been proposed by a foreign government or international organization and those that are to be proposed by a TSA Program Office, as well as proposals to extend, amend, or terminate an International Agreement or International Arrangement or any Annex, appendix, or project arrangement thereto, and the content of those International Agreements or Arrangements;
- (2) Initiating and leading or coordinating negotiation of International Agreements and International Arrangements to which TSA is a prospective party or participant;
- (3) Ensuring that the appropriate non-legal clearances from DHS OIA and other interested U.S. agencies, including DOS regional bureaus through the Office of Transportation Policy (OTP), are obtained prior to, during and at the conclusion of negotiations;
- (4) Ensuring that all International Agreements or International Arrangements under negotiation are conducted in accordance with DHS and TSA policy, and that their substantive terms are consistent with DHS and TSA policies and requirements;
- (5) Notifying and sending copies of the signed International Agreements or International Arrangements to all relevant parties and TSA elements;
- (6) Leading and/or coordinating all TSA responsibilities carried out under an International Agreement or International Arrangement to which TSA is a party or participant;
- (7) Serving as the central repository for all International Agreements and International Arrangements to which TSA is a party or participant;
- (8) Notifying the appropriate TSA Program Offices prior to the expiration of an International Agreement or International Arrangement in order to determine whether there is interest in extending it and facilitating such extensions through amendment, or closing out agreements upon expiration; and
- (9) Reviewing and approving all proposed updates, amendments and revisions to International Agreements, International Arrangements, and any Annexes, appendices or project arrangements thereto.

C. TSA Program Offices are responsible for:

- (1) Preparing a written Action Memorandum containing a preliminary justification and feasibility assessment before requesting or upon receipt of a request for an International Agreement or International Arrangement;
- (2) Obtaining background information and articulating the specific project work requirements or objectives for the preparation of a draft International Agreement or International Arrangement, in coordination with OGS and OCC;

- (3) Arranging with OGS for the translation of a draft International Agreement or International Arrangement when a foreign language text is requested or proposed by the other party;
- (4) Monitoring the status, progress of, and any activities carried out pursuant to an International Agreement or International Arrangement throughout its term and in consultation with OCC updating, as necessary, the International Agreement or International Arrangement to reflect any changes made or any other updates;
- (5) Providing an annual status report to OGS and OCC on each International Agreement or International Arrangement for which the Program Offices are responsible or under which the Program Offices are carrying out work on behalf of DHS or TSA;
- (6) Reviewing and approving all proposed updates, amendments and revisions to International Agreements, International Arrangements, and any Annexes, appendices or project arrangements thereto; and
- (7) When appropriate, in coordination with the Chief Financial Officer and OCC, preparing an Annex describing specific financial arrangements relating to any property or services to be provided or to TSA's participation in a project or activity.

6. POLICY:

- A. All International Agreements and International Arrangements must be authorized by U.S. law and be consistent with the TSA mission, existing DHS and TSA regulations and policies, applicable treaties and other International Agreements or International Arrangements to which the United States is a party or signatory, and international law.
- B. No work contemplated in an International Agreement or International Arrangement shall be undertaken until a signed International Agreement or International Arrangement is in place, except with OGS approval and OCC clearance.
- C. All TSA Program Offices initiating, negotiating, or carrying out activities under an International Agreement or International Arrangement must comply with the procedures set forth in this directive.

7. PROCEDURES:

A. Prior to Negotiations

(1) Initiation of Formal Request:

- (a) All requests for, or drafts of, a proposed International Agreement or International Arrangement received from a foreign government, international organization or other entity will be forwarded to OGS for approval and to OCC for legal clearance.
- (b) Requests for International Agreements or International Arrangements generated by a TSA Program Office will be forwarded to OGS for approval and to OCC for legal clearance.

- (2) Upon receipt from a foreign government of a proposed draft of, or request to enter into, an International Agreement or International Arrangement, the responsible RA will coordinate with the appropriate TSA Program Office(s) regarding the preparation of an Action Memorandum containing a preliminary justification and feasibility assessment.
- (3) The TSAR will socialize any proposed International Agreement or International Arrangement with the appropriate officials of the relevant U.S. Embassy, to ensure their support for the proposal prior to negotiation.
- (4) The RD or assigned RA will socialize any proposed International Agreement or International Arrangement with the appropriate officials of DHS OIA and the regional DOS Bureau, to ensure their support for the proposal prior to negotiation.
- (5) When OCC receives confirmation from OGS that an International Agreement is required, and prior to initiation of negotiations, OCC will arrange for the necessary DOS legal clearance for negotiating authority.

B. Clearances

- (1) TSA Clearance: All International Agreements and International Arrangements will be cleared internally with all affected TSA Program Offices, OGS, and OCC, prior to signing. If there are Annexes, the entire package must be cleared by the Program Office(s) responsible for implementing the Annexes, as well as OGS and OCC.
- (2) DOS Clearance: OCC will transmit a copy of the final negotiated draft International Agreement to DOS L/EB for clearance prior to signing. Unless otherwise determined by OCC, DOS clearance is not required for International Arrangements.
- (3) DHS Coordination: OGS and OCC will notify the DHS Office International Affairs and DHS Office of General Counsel (OGC), respectively, of TSA's intention to enter into an International Agreement prior to commencement of negotiations.
- (4) Other Agency Clearance: OGS will coordinate with and secure any necessary non-legal clearances from agencies external to TSA prior to signing.

C. Signing:

- (1) Before a foreign language translation of an MOA, MOC, MOU or any Annex may be signed, the foreign and English language texts must be submitted to the DOS Office of Language Services and a memorandum obtained certifying that the foreign and English language texts are in conformity with each other and that both texts have the same meaning in all substantive respects. This requirement holds for draft diplomatic notes that set forth the terms of an International Agreement in two languages. For all other International Arrangements, OGS must ensure the conformity of the foreign and English language texts prior to signing.

- (2) International Agreements and International Arrangements will be signed only by the DHS Secretary, a U.S. Ambassador, the TSA Administrator, the OGS Assistant Administrator, or a duly authorized designee.
- (3) An International Agreement or International Arrangement will be concluded: (1) in a signing ceremony; (2) through an exchange of execution drafts delivered by diplomatic pouch, registered international mail or other traceable express courier service, in coordination with the appropriate TSAR and U.S. Embassy; (3) via e-mail through the exchange of signed, scanned and counter-signed texts; or (4) through an exchange of diplomatic notes between the parties.
- (4) Bilateral International Agreements and International Arrangements will be executed in at least two originals for each language in which the final text is drafted.

D. Post-Signing:

- (1) OGS will ensure that each party to an International Agreement and each participant in an International Arrangement are provided one original copy of the signed International Agreement or International Arrangement, for each language in which the final text is drafted.
- (2) After OGS receives a signed original of the International Agreement or International Arrangement, the DO will provide copies to OCC and the relevant TSA Program Office(s).
- (3) To meet the compliance requirements of the Case Act, OCC will forward a signed copy of the International Agreement to L/EB, with a copy to DHS OGC.
- (4) OGS will maintain signed originals of all International Agreements and International Arrangements in a central repository for TSA. The central repository shall include, in addition to a physical file containing original signed documents, an electronic system of record. All signed International Agreements and International Arrangements will be scanned into a readily accessible format and stored in the central repository, with a clearly understandable and retrievable naming convention (which shall include the Agreement Number).

E. Amendment, Expiry, Extension and Termination:

- (1) The relevant Program Office will coordinate with OCC and OGS if there is an interest in expanding or changing the scope of the work that would require a new Annex or amendment to an existing International Agreement or International Arrangement.
- (2) The TSAR or RA will notify the relevant TSA Program Office(s) no later than 60 days before an International Agreement or International Arrangement is scheduled to expire in order to determine whether there is a need for extending it. OGS will also communicate with the foreign counterpart to confirm whether it wishes to renew or extend the International Agreement or International Arrangement. If a renewal or extension is required, the RA will prepare an Action Memorandum for OGS approval outlining the reasons therefore.
- (3) To extend an International Agreement or International Arrangement, OCC will prepare a draft amendment and provide it to OGS.

- (4) If the International Agreement or International Arrangement is to be terminated, the RA will notify the other party or participant of the termination date in accordance with the terms of the International Agreement or International Arrangement. In the case of an International Agreement, OCC shall obtain L/EB clearance for the termination in accordance with the C-175 Process prior to the RA notifying the other party.

F. Special Procedures for TAs:

- (1) Preparation: OCC will prepare a draft TA in consultation with OGS and the appropriate Program Office.
- (2) TSA Clearance: All TAs will be cleared internally with OGS, OCC and other relevant elements prior to signing.
- (3) DHS Clearance: All TAs will be negotiated in coordination with S&T and cleared with S&T prior to signing.
- (4) DOS Clearance: DOS clearance is not required before a TA is signed.
- (5) TSA Signing: Once all necessary clearances are obtained, the TA may be signed by the Program Office's Assistant Administrator or designee.
- (6) Foreign Party Signing: The Program Office may obtain the foreign party's signature to the TA in coordination with OGS, the TSAR, and OCC.
- (7) TA Dissemination and System of Record: The Program Office will forward copies of the executed TA to S&T, OCC and OGS for entry into the central repository.

- 8. APPROVAL AND EFFECTIVE DATE:** This policy is approved and effective the date of signature unless otherwise specified.

APPROVAL

Signed

July 7, 2016

Paul Fujimura
Assistant Administrator
Office of Global Strategies

Date

EFFECTIVE

Date

Distribution: TSA Employees

TSA MANAGEMENT DIRECTIVE No. 800.4
INTERNATIONAL AGREEMENTS

Point-of-Contact: Office of Global Strategies, OGSCommunications@tsa.dhs.gov, Global Affairs, 571-227-5335; Office of Chief Counsel, International and Operational Law, 571-227-4520